PUBLIC PROSECUTOR

v.

YAP MIN WOIE

FEDERAL COURT, KUALA LUMPUR
TAN SRI DATO' ANUAR BIN DATO' ZAINAL ABIDIN CJ (MALAYA)
DATO' MOHAMED DZAIDDIN BIN HJ. ABDULLAH FCJ
DATO' PEH SWEE CHIN FCJ
[CIVIL APPEAL NO. 51-84-89]
9 NOVEMBER 1995

JURISDICTION: *Juvenile Court - Detention of offenders at Reform Schools - Juvenile Court ordering detention of juvenile in approved school for three years - Whether High Court Judge has power to reduce period of detention - Reference to Federal Court - Juvenile Courts Act 1947 ss. 12(1), 28(a) & (b), 40 - Courts of Judicature Act 1964 s. 66(1).*

WORDS & PHRASES: *"Shall" - Sections 12 & 28 Juvenile Courts Act 1947 - Whether imposing any mandatory duty on Juvenile Court.*

The respondent, a juvenile, was charged with robbery under s. 392 Penal Code. He was tried by the Juvenile Court, Johor Bahru, and upon his guilty plea, was ordered to be detained at a Reform School for a period of three years pursuant to s. 28 Juvenile Courts Act 1947. The respondent appealed against the order to the High Court, whereupon the learned Judge, allowing the appeal, reduced the period of detention to one year on the ground that the respondent was a first offender and hence deserved some leniency. The Public Prosecutor, dissatisfied with the decision, has obtained leave of the Federal Court under s. 66(1) Courts of Judicature Act 1964 to refer to it the following question for determination:

> *Whether, in view of s. 28 of the Juvenile Courts Act 1947, is it right in law for the learned Judge to reduce the period of detention of juvenile in the approved school as ordered by the Juvenile Court under s. 12(1)(f) of the Act from a period of three years to one year?.*

Held:

Per Mohamed Dzaiddin bin Abdullah FCJ (delivering the judgment of the Court):

[1] Under s. 12 Juvenile Courts Act 1947 the power to order a juvenile to be sent to an approved school is bestowed to the Juvenile Court, and under s. 28 that order shall be an authority for the juvenile's detention for a period of three years. By proviso (a) of s. 28, only the Board of Visitors of the approved school to which the juvenile was sent may shorten the period of detention. Clearly, a High Court Judge is not empowered, and nor has he the discretion, to shorten that period.

[2] Having regard to the powers of the Juvenile Court under the Juvenile Courts Act, and the powers conferred on the High Court by s. 40 of the Act, and particularly to the scope of s. 28 and proviso (a) thereto, the word "shall" appearing in ss. 12 and 28 of the Juvenile Courts Act is mandatory in nature, and therefore, under s. 28, the order of detention of three years made by the Juvenile Court is mandatory which could not be varied by the appellate Court.

[Question answered in the negative].

*[**Bahasa Malaysia** Translation of Headnotes]*

BIDANGKUASA: *Mahkamah juvenil - Penahanan pesalah-pesalah di Sekolah Pemulihan Akhlak - Mahkamah Juvenil memerintahkan penahanan juvenil di sekolah yang diluluskan selama 3 tahun - Samada Hakim Mahkamah Tinggi mempunyai kuasa untuk mengurangkan tempoh penahanan - Rujukan kepada Mahkamah Persekutuan - Akta Mahkamah Juvenil 1947 ss. 12(l), 28(a) & (b), 40 - Akta Mahkamah-Mahkamah Kehakiman 1964 s. 66(l)*

PERKATAAN & ISTILAH: *"Shall" Seksyen-seksyen 12 dan 28 Akta Mahkamah Juvenil 1947 - Samada mengenakan apa-apa kewajipan mandatori ke atas Mahkamah Juvenil.*

Responden, seorang juvenil, telah dituduh merompak di bawah s. 392 Kanun Jenayah. Beliau telah dibicarakan oleh Mahkamah Juvenil, Johor Bahru dan di atas akuan bersalahnya, telah diperintah supaya ditahan di sebuah Sekolah Pemulihan Ahlak selama 3 tahun selaras dengan s. 28 Akta Mahkamah Juvenil 1947. Responden telah merayu kepada Mahkamah Tinggi terhadap perintah tersebut, di mana Hakim yang bijaksana, dalam membenarkan rayuan tersebut, telah mengurangkan tempoh penahanan kepada satu tahun atas alasan bahawa pesalah telah melakukan kesalahan buat kali yang pertama dan dengan itu wajar diberikan keringanan hukuman. Pendakwa Raya, yang tidak berpuashati dengan keputusan tersebut, telah mendapatkan kebenaran Mahkamah Persekutuan di bawah s. 66(l) Akta Mahkamah Kehakiman 1964 untuk merujuk kepadanya soalan yang berikut untuk penentuan:

> *Samada mengambil kira s. 28 Akta Mahkamah Juvenil 1947, ianya wajar di sisi undang-undang bagi Hakim yang bijaksana mengurangkan tempoh tahanan juvenil di sekolah yang diluluskan sepertimana yang diperintahkan oleh Mahkamah Juvenil di bawah s.12(l)(f) Akta tersebut daripada tempoh tiga tahun kepada satu tahun.*

Diputuskan:

Oleh Mohamed Dzaiddin bin Abdullah, HMP (menyampaikan penghakiman Mahkamah):

[1] Di bawah s. 12 Akta Mahkamah Juvenil 1947, kuasa untuk memerintahkan supaya seorang juvenil dihantarkan ke sebuah sekolah yang diluluskan terletak pada Mahkamah Juvenil, dan di bawah s. 28 perintah tersebut menjadi autoriti bagi penahanan juvenil tersebut bagi tempoh selama 3 tahun. Menurut peruntukan (a) s. 28, hanya Lembaga Pelawat-Pelawat sekolah yang diluluskan itu, di mana juvenil tersebut telah dihantar, boleh memendekkan tempoh penahanan. Dengan itu jelas, bahawa Hakim Mahkamah Tinggi tidak diberi kuasa, serta tidak mempunyai budibicara untuk memendekkan tempoh itu.

[2] Menimbangkan kuasa-kuasa Mahkamah Juvenil di bawah Akta Mahkamah Juvenil, dan kuasa-kuasa yang dianugerahkan kepada Mahkamah Tinggi oleh s. 40 Akta, dan khususnya kepada bidang s. 28 dan peruntukan (a) didalamnya, perkataan "shall" yang terdapat dalam ss. 12 dan 28 Akta Mahkamah Juvenil adalah bersifat mandatori, dan dengan itu, di bawah s. 28, perintah penahanan yang dibuat oleh Mahkamah Juvenil adalah mandatori yang mana tidak boleh diubah oleh Mahkamah rayuan.

[Soalan dijawab dalam bentuk negatif].

Cases referred to:
Liverpool Borough Bank v. Turner [1861] 30 LJ Ch. 379 ***(foll)***
Howard v. Bodington [1877] 2 PD 203 ***(foll)***
Pow Hing & Anor. v. Registrar of Titles, Malacca [1981] 1 MLJ 155 ***(foll)***

Legislation referred to:
Juvenile Courts Act 1947 ss. 12, 28, 40
Courts of Judicature Act 1964 s. 66(1)

Other source referred to:
Bennion's Statutory Interpretation, 2nd Edn., p. 31

For the applicant - Azahar Mohamed, DPP
For the respondent - in person

JUDGMENT

Mohamed Dzaiddin bin Abdullah FCJ:

In this reference, the respondent, a juvenile at the material time, was charged for robbery punishable under s. 392 of the Penal Code at the Juvenile Court Johor Bahru on 9 December 1989. He pleaded guilty to the aforesaid charge and was ordered to be detained at the approved school, namely, Tunas Bakti Reform School, Taiping, for a period of three years from the date of the order. He appealed against the said order to the High Court Judge, Johor Bahru. On 19 December 1990, his Lordship allowed the appeal and reduced the period of detention from three years to one year on the ground that he was a first offender who had pleaded guilty to the charge of robbery. Needless to say, the Pendakwa Raya was unhappy with the above decision. With the leave of this Court, the following question was referred to us under s. 66(l) of the Courts of Judicature Act 1964:

> Whether, in view of s. 28 of the Juvenile Courts Act 1947, is it right in law for the learned Judge to reduce the period of detention of Juvenile in the approved school as ordered by the Juvenile Court under s. 12(l)(f) of the Act from a period of three years to one year?

After hearing Encik Azahar Mohamed, DPP, we answered the above question in the negative. Our reasons are as follows.

The jurisdiction and powers of the Juvenile Court are provided under Part II of the Juvenile Courts Act 1947 (Act 90) ("the Act"). The powers of the Court, on proof of an offence committed by a Juvenile, are clearly stated in s. 12 of the Act. For the purpose of the present reference, sub-section (1) states:

> (1) Where a Juvenile Court is satisfied that an offence has been proved, the Court shall, in addition to any other powers exercisable by virtue of this Act or any other law for the time being in force, have power:
>
> (f) to order the offender to be sent to an approved school or Henry Gurney school;

Thus, having pleaded guilty to the charge of robbery, the Juvenile Court accordingly made an order that the respondent be sent to Sekolah Tunas Bakti, Taiping, for a period of three years in accordance with s. 28 of the Act, which states:

> Where a Juvenile Court orders a Juvenile to be sent to an approved school, the order **shall** be an authority for his detention therein for a period of three years or until he attains the age of fourteen years whichever is the longer:
>
> Provided -
>
> (a) that the Board of Visitors of the approved school to which the juvenile is sent may in their absolute discretion shorten the period of detention for reasons which appear to them to be sufficient or may release any such Juvenile on licence for such period and upon such conditions as they may deem fit to impose and
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> (b) that no juvenile shall be released from an approved school during the first twelve months of the period of detention without the consent of the Minister signified in writing.

The issue here is whether the High Court Judge has the power or the discretion to reduce the period of detention from three years to one year. Our answer is that under s. 28 of the Act, he is not empowered nor has he the discretion to shorten the period of detention. The power to order a juvenile to be sent to an approved school is bestowed under the Act to the Juvenile Court and that order shall be an authority for the juvenile's detention for a period of three years. Under the proviso (a), it is further stipulated that only the Board of Visitors of the approved school to which the Juvenile was sent may in their absolute discretion for reasons which appear to them to be sufficient, shorten the period of detention.

Next, we have to consider whether the word "shall" as appearing in s. 12 and 28 respectively is to be construed as mandatory or directory. It is clear to us that where a Court or tribunal is given in terms a power to exercise a certain jurisdiction, this may be construed as imposing a mandatory duty to act (*Bennion's Statutory Interpretation*, second edn. p. 31).

A question may be asked: How does the Court distinguish between mandatory and directory duties? The answer is given by Lord Campbell in *Liverpool Borough Bank v. Turner* [1861] 30 LJ Ch. 379 at p. 380:

> No universal rule can be laid down ... It is the duty of the Courts of Justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed.

In *Howard v. Bodington* [1877] 2 PD 203 which was followed by the Federal Court in *Pow Hing & Anor. v. Registrar of Titles, Malacca* [1981] 1 MLJ 155 Lord Penzance stated at p. 211:

> I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter, consider the importance of the provision and the relation of that provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect decide whether the enactment is what is called imperative or only directory.

Thus, our answer to the above question is that, having regard to the powers of the Juvenile Court under the Act and the powers of the Juvenile Court conferred on the High Court under s. 40 of the Act, and particularly to the scope of s. 28 and proviso (a) thereto pertaining to the discretion given by the legislature to the Board of Visitors, it is our conclusion that the word "shall" means mandatory and therefore under s. 28, the order of detention of three years made by the Juvenile Court is mandatory which cannot be varied by the appellate Court. It is only the Board of Visitors of the said approved school who has the discretion to shorten the period.